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12 *Attorneys for Plaintiff Upexi, Inc.*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF NEVADA**

16 UPEXI, INC., a Nevada corporation,
 17 Plaintiff,
 18 v.
 19 DOES 1-100; ROE CORPORATIONS 1-100;
 20 AND XYZ LLCs 1-100,
 21 Defendant.

Case No.:

COMPLAINT

JURY DEMAND

22
 23 Plaintiff Upexi, Inc., by and through its counsel of record, the law firm of Dickinson Wright
 24 PLLC, submits its Complaint against Does 1 through 100, Roe Corporations 1-100, and XYZ
 25 LLCs 1-100, inclusive, and alleges as follows:

26 **SUMMARY**

27 During the four-day period from Monday, September 30, 2024, through Wednesday,
 28 October 3, 2024, what purported to be approximately 195,000 new stockholders mysteriously

1 appeared each to purchase a single share of the common stock of Upexi, Inc. (“Upexi”) in micro-
 2 second succession on a national securities exchange to create the appearance of legitimate trading
 3 activity, but in fact designed to defraud Upexi out of 202,183 shares of stock. Although the
 4 company, on Friday, September 27, 2024 after the close of the market, announced a 20-to-1 reverse
 5 stock split, the company had made no announcement that would justify an increase in new
 6 stockholders by approximately 4,000 percent. Upon information and belief, to execute this
 7 fraudulent scheme, the perpetrator(s) engaged in wash trading and matched orders after positioning
 8 the shares into pre-determined accounts to enable effecting the single-share sales to the single-
 9 share purchasing accounts. The identities of these accounts, at this time, are known only to the
 10 broker-dealers that executed the trades. The purpose of these fraudulent transactions included,
 11 *inter alia*, defrauding Upexi into issuing 202,183 shares of stock in connection with the reverse
 12 split, concealing the beneficial owners of the trading, and creating the appearance of artificial
 13 interest to drive up the ultimate value of individual share positions before dumping the stock into
 14 the market.

15 **PARTIES**

16 1. Plaintiff, Upexi, Inc., is a Nevada corporation with corporate headquarters located
 17 in Las Vegas, Nevada and Tampa, Florida. At all times relevant to this Complaint, Plaintiff had
 18 two classes of securities – common stock and a single class of preferred stock convertible into
 19 shares of common stock at a ratio of 1.8 shares of preferred stock for a single share of the
 20 Company’s common stock, with additional terms and conditions determined by the Board of
 21 Directors.

22 2. Defendants each made at least two purchases of Upexi stock in increments of one
 23 share in at least two different accounts commencing on or about September 20, 2024, and
 24 continuing through and including October 3, 2024.

25 3. The true names and capacities, whether individual, corporate, associate or
 26 otherwise, of Defendants Does 1-100, Roe Corporations 1-100, and XYZ LLCs 1-100, inclusive,
 27 are unknown to Plaintiff, which therefore sues said Defendants by such fictitious names. Plaintiff
 28 will amend this Complaint to state the true names and capacities of said fictitious defendants when

1 they are discovered.

2 **JURISDICTION AND VENUE**

3 4. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15
 4 U.S.C. § 78aa because Plaintiff's claim arises under section 10(b) of the Securities Exchange Act
 5 of 1934 (15 U.S.C. § 78j(a)).

6 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
 7 substantial part of the events or omissions giving rise to the claims occurred in Nevada.

8 **GENERAL ALLEGATIONS**

9 6. Plaintiff is engaged in the business of acquiring and operating Amazon and
 10 eCommerce brands through 15 active subsidiaries. Plaintiff's established brands are in the health,
 11 wellness, pet, beauty and other growing markets. Plaintiff's goal is to continue to accumulate
 12 consumer data and build out a significant customer database across all industries into which the
 13 company sells, and, in the process, to acquire profitable Amazon and eCommerce businesses that
 14 can scale quickly and reduce costs through corporate synergies.

15 7. At all times relevant to this Complaint, Plaintiff's common stock traded – and
 16 continues to trade – on the Nasdaq Stock Market LLC ("Nasdaq") under the ticker symbol "UPXI."

17 8. On June 21, 2023, Nasdaq filed with the Securities and Exchange Commission
 18 ("SEC" or "Commission") a proposed rule change, that ultimately became effective on November
 19 1, 2023, related to notification and disclosure of reverse stock splits. That new rule, Nasdaq Listing
 20 Rule 5250(e)(7), provides that "[i]n the case of a reverse stock split, a Company must file a
 21 complete Company Event Notification Form no later than 12:00 p.m. ET five (5) business days
 22 prior to the proposed market effective date....If a Company takes legal action to effect a reverse
 23 stock split notwithstanding its failure to timely satisfy these requirements, or provides incomplete
 24 or inaccurate information about the timing or ratio of the reverse stock split in its public disclosure,
 25 Nasdaq will halt the stock...."

26 9. Prior to September 27, 2024, Upxi's most recent announcement was on August 8,
 27 2024, titled "Upxi Provides Shareholder Update on Restructuring to Reduce Debt and Increase
 28 Working Capital." (<https://ir.upxi.com/news-events/press-releases/detail/91/upxi-provides->

1 [shareholder-update-on-restructuring-to](#)) (last visited November 21, 2024). Not only did that
 2 announcement not impact the market, but the price of Upesi common stock decreased immediately
 3 after that announcement.

4 10. On September 27, 2024, after the close of trading for the week, Plaintiff announced
 5 a reverse stock split of its authorized, issued and outstanding shares of common stock and preferred
 6 stock at a ratio of 20-to-1 (the “Reverse Split”). Plaintiff published the reverse stock split by filing
 7 a Form 8-K. (<https://ir.upxi.com/sec-filings/all-sec-filings/content/0001477932-24-005987/0001477932-24-005987.pdf>) (last visited November 21, 2024).

9 11. The purpose of the Reverse Split was to reduce the number of shares and increase
 10 the share price in order to regain compliance with Nasdaq requirements for minimum share prices.
 11 The Nasdaq Listing Rules generally require that listed companies must maintain a minimum bid
 12 price of \$1.00; failure to do so for a period of 30 consecutive business days results in a deficiency
 13 and could result in a delisting of the company from the Nasdaq. Companies are deemed to have
 14 achieved compliance if they are able to raise their bid price to \$1.00 or above for a minimum of
 15 10 consecutive business days. Companies often achieve compliance by a reverse stock split.

16 12. Upesi’s announcement of September 27, 2024 stated that, as a result of the Reverse
 17 Split, every 20 shares of common stock issued and outstanding would be reclassified into one new
 18 share of common stock.

19 13. On September 27, 2024, Upesi’s common stock closed at a pre-split adjusted price
 20 on the Nasdaq of \$0.21 a share.

21 14. Upesi scheduled the Reverse Split to become effective at 12:01 a.m. (Eastern
 22 Daylight Time) on October 3, 2024, at which time Upesi’s common stock would begin trading on
 23 a split-adjusted basis.

24 15. The announcement stated the total number of shares of common stock held by each
 25 stockholder of the company would be converted automatically into the number of shares of
 26 common stock held by each stockholder immediately prior to the Reverse Split divided by 20, with
 27 such resulting number of shares rounded up to the nearest whole share.

28 16. As a result of the Reverse Split, one share of UPXI stock that an investor had

1 purchased prior to the reverse split would represent .05 shares of UPXI stock post Reverse Split.

2 17. The announcement also stated Plaintiff would issue one whole share of the post-
 3 reverse stock split common stock to any stockholder who otherwise would have received a
 4 fractional share as a result of the reverse stock split. In other words, Upexi would not issue
 5 fractional shares in connection with the Reverse Split.

6 18. The purpose of rounding up fractional shares was to comply with Chapter 78,
 7 section 207, of the Nevada Revised Statutes, regarding a change in the number of a company's
 8 authorized shares (NRS 78.207).

9 19. In approving the Reverse Split, Plaintiff relied on the assumption of an efficient
 10 market free from manipulation.

11 20. On the date on which the Reverse Split became effective, the effect of the Reverse
 12 Split meant that one share of Upexi post-Reverse Split at this time would be worth \$4.20 a share.

13 21. The Nasdaq provides a definition of an "odd lot" trade as a trading order for less than
 14 100 shares of stock (<https://www.nasdaq.com/glossary/o/odd-lot>) (last visited November 21, 2024).

15 22. The daily trade volume for Upexi stock prior to the Reverse Split was a few
 16 thousand shares of stock a day. More specifically and relevant to the allegations in this Complaint,
 17 in the one week prior to the announcement, specifically between September 23, 2024 and
 18 September 27, 2024, there was not one day on which odd lot trading in Upexi totaled more than
 19 5,495 shares.

20 23. Immediately following Upexi's announcement, for which the first trading day was
 21 September 30, 2024, the daily odd lot trading volume on the Nasdaq for Upexi's common stock
 22 dramatically increased as follows:

- 23 a. On September 30, 2024, 68,237 odd lots of Upexi shares traded;
- 24 b. On October 1, 2024, 39,738 odd lots of Upexi shares traded;
- 25 c. On October 2, 2024, 29,239 odd lots of Upexi shares traded; and
- 26 d. On October 3, 2024, 68,005 odd lots of Upexi shares traded.

27 24. For the four-day period of trading of Upexi common stock on the Nasdaq from
 28 September 30, 2024 through October 3, 2024, 205,219 shares of Upexi common stock traded in

1 odd lots.

2 25. Upon information and belief, by virtue of the odd lot trades between September 30,
 3 2024 and October 3, 2024, and specifically by virtue of the odd lot purchases of one single share,
 4 Upexi added approximately 195,000 shareholders in four days.

5 26. On September 27, 2024, upon close of the market, Upexi had fewer than 5,000
 6 shareholders.

7 27. Upon information and belief, on September 30, 2024, precisely at the open of the
 8 market at 9:30:00 A.M., three separate transactions each involving exactly 7,986 shares took place
 9 to begin positioning shares to fill the pre-positioned orders for one share of Upexi.

10 28. Upon information and belief, on October 1, 2024, within 30 minutes of the open of
 11 the market at 9:52:14 A.M., one transaction involving exactly 277,112 shares took place to position
 12 further shares to fill pre-positioned orders for one share of Upexi.

13 29. Upon information and belief, the pattern of select transactions to fill the planned
 14 single-share odd lot orders occurred throughout September 30, 2024, October 1, 2024, October 2,
 15 2024 and October 3, 2024.

16 30. Upon information and belief, the odd lot single share purchases of Upexi common
 17 stock throughout the period September 30, 2004, through October 3, 2024, were a function of a
 18 combination of matched orders and wash trades.

19 31. Upon information and belief, throughout the period September 30, 2004, through
 20 October 3, 2024, Defendants placed manipulative trades in the common stock of Upexi,
 21 engineering thousands of coordinated trades between accounts controlled by Defendants acting in
 22 concert to create the false impression that market participants were engaging in arms-lengths
 23 transactions.

24 32. Upon information and belief, throughout the period September 30, 2004, through
 25 October 3, 2024, Defendants entered pre-arranged orders using various combinations of accounts
 26 Defendants controlled to position for sale Upexi common shares they acquired during that period
 27 to buy, in turn, single share odd lots of Upexi common shares, with opposite orders submitted at
 28 substantially the same time, size, and price with accounts that they alone controlled.

1 33. Upon information and belief, this resulted in approximately 195,000 or more
 2 instances in which accounts Defendants controlled were on both the buy and sell side of a trade in
 3 Upexi common stock throughout the period from September 30, 2004 through October 3, 2024.

4 34. Upon information and belief, throughout the period from September 30, 2024
 5 through October 3, 2024, Defendants coordinated these matched orders for no legitimate economic
 6 reason. Instead, the purpose of the matched orders was to defraud Upexi out of one whole share of
 7 post-split rounded up Upexi common stock and to mislead investors about the extent of the trading
 8 activity in the market for Upexi common stock.

9 35. Upon information and belief, throughout the period from September 30, 2024
 10 through October 3, 2024, Defendants designed these trades to avert trip-wires, circuit-breakers and
 11 other compliance safeguards in place at the broker-dealers at which they executed the trades.

12 36. Upon information and belief, the odd lot trades of single share odd lot purchases
 13 and related increased trading volume resulted from this market manipulation scheme that the
 14 Defendants devised and implemented (the “Round-Up Scheme”).

15 37. The goal of the Round-Up Scheme was to obtain one whole share of post-split
 16 UPXI stock that was worth 20 times the amount of a pre-Reverse Split share.

17 38. Upon information and belief, Defendants utilized or created two or more brokerage
 18 accounts at the same and at different broker-dealers to make multiple purchases of Upexi common
 19 stock in single share odd lot increments.

20 39. Upon information and belief, each of these transactions included numerous
 21 purchases of a single share of stock (worth 0.05 shares of split-adjusted stock) for the purpose of
 22 obtaining one new share of common stock and defrauding Upexi out of shares that it would not
 23 otherwise issue had the Defendants effected a single purchase in each of their true names.

24 40. Following the Reverse Split, Plaintiff estimates the number of accounts holding
 25 Upexi common stock exceeded 200,000. On information and belief, this increase in the number
 26 of accounts holding Upexi common stock resulted from the Round-Up Scheme and Defendants’
 27 actions creating numerous accounts holding odd lot shares of pre-Reverse Split stock.

28 41. The Round-Up Scheme resulted in Plaintiff being forced to issue 202,183

1 additional shares of stock as a result of rounding up fractional shares.

2 42. Plaintiff did not receive any consideration for being defrauded into issuing these
3 additional shares of Upesi common stock due to the fraudulent actions of Defendants.

4 43. The total number of outstanding shares of Upesi common stock after the Reverse
5 Split and prior to the issuance of the additional round up shares was 1,040,886 shares.

6 44. The Round-Up Scheme caused harm to Plaintiff by fraudulently causing Plaintiff
7 to issue 202,183 shares of stock for a fraction of the value of such stock without Plaintiff receiving
8 consideration in return.

9 45. The Round-Up Scheme also resulted in significant dilution of the value of Upesi
10 common shares, causing harm to Upesi and its pre-announcement shareholders.

11 46. Upon information and belief, the Round-Up Scheme deceived Upesi investors
12 regarding the actual supply and demand for Upesi common stock.

13 47. The increased trading volume caused by the Round-Up Scheme created the false
14 impression that numerous market participants were purchasing Upesi common stock. In reality,
15 Plaintiff is informed and believes that Defendants created this false impression by engaging in
16 numerous transactions by using multiple different accounts without there being a change in the
17 underlying beneficial ownership of the Upesi common shares.

18 48. Upon information and belief, the Defendants implemented the same manipulative
19 scheme involving securities of other issuers with various classes of stock also traded on the Nasdaq
20 and executed the scheme at the same broker-dealers.

21

FIRST CLAIM FOR RELIEF
VIOLATION OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934
(MARKET MANIPULATION)

22 49. Plaintiff reasserts and realleges all allegations in the foregoing paragraphs as if fully
23 restated herein.

24 50. In violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §
25 78j(b)), Defendants directly and indirectly, by use of the means and instrumentalities of interstate
26 commerce or of the mails, did knowingly, intentionally, and/or recklessly use or employ, in
27 connection with the purchase or sale of securities, a manipulative or deceptive device or
28

1 contrivance in violation of SEC Rule 10b-5 (17 C.F.R. § 240.10b-5), by: (a) employing devices,
 2 schemes, and artifices to defraud; and/or (b) engaging in acts, practices, or courses of business that
 3 operated and would operate as a fraud and deceit against Plaintiff and Plaintiff's shareholders of
 4 record on September 27, 2024.

5 51. Defendants engaged in manipulative acts, including wash trading, matched orders
 6 and pre-arranged trades, consisting of utilizing multiple brokerage accounts to purchase single
 7 share odd lots of Upesi common stock in each account in order to defraud Plaintiff into issuing
 8 additional shares of stock to Defendants.

9 52. Defendants' actions were fraudulent and intended to make it appear as if multiple
 10 independent purchasers were purchasing shares of Upesi common stock. Defendants did this to
 11 deceive Plaintiff into issuing Defendants additional shares of Upesi common stock. These
 12 purchases also conveyed false information to the market concerning the real purpose of the
 13 purchases.

14 53. Defendants' actions of making multiple small purchases over multiple accounts
 15 artificially impacted market activity.

16 54. Defendants intended for these actions to, and Defendants did, earn a substantial
 17 profit by defrauding Plaintiff into issuing one whole share of stock for each pre-split odd lot
 18 transaction made by each of the Defendants.

19 55. Defendants have damaged Plaintiff by causing Plaintiff to issue 202,183 additional
 20 shares of Upesi common stock as a result of Upesi rounding up fractional shares.

21 56. Plaintiff effected the Reverse Split for a bona fide market purpose, specifically to
 22 come into compliance with Nasdaq's minimum price rule, with the reasonable expectation of an
 23 efficient market free of manipulation, to wit, Plaintiff would issue round-up shares of stock to
 24 legitimate Upesi stockholders who held a fractional share of stock and not to market manipulators
 25 who intentionally purchased fractional shares over multiple accounts.

26 57. Defendants' actions of creating multiple accounts to make purchases of limited odd
 27 lot quantities of Upesi common stock in each account in order to force Plaintiff to issue additional
 28 shares of post-Reverse Split stock evidences fraudulent intent and a motive and opportunity to

1 defraud Upexi using the facilities of a national stock exchange.

2 58. Plaintiff was the seller of Upesi common stock – securities – by virtue of Plaintiff's
3 issuance of 202,183 shares of Upesi common stock arising out of Defendants' fraudulent conduct.

4 || 59. Plaintiff has suffered damages.

5 60. Plaintiff has been forced to retain counsel to prosecute this action and is entitled to
6 an award of attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
DECLARATORY JUDGMENT

9 61. Plaintiff reasserts and realleges all allegations in the foregoing paragraphs as if fully
10 restated herein.

11 62. There is a present controversy between and among the parties hereto as to the
12 duties, rights, and obligations of the parties, specifically as to whether Plaintiff is obligated to issue
13 shares of Upexi common stock to the purported odd lot purchasers on September 30, 2024, October
14 1, 2024, October 2, 2024 and October 3, 2024, and which controversy has impacted Plaintiff
15 adversely, and which, if not resolved, will result in further injury.

16 63. This court has jurisdiction to enter a declaratory judgment declaring the extent and
17 nature of the duties and obligations of Plaintiff with respect to whether Plaintiff shall be required
18 to issue shares of Upexi common stock to the purported odd lot purchasers on September 30, 2024,
19 October 1, 2024, October 2, 2024 and October 3, 2024. A Declaration by this Court of the rights
20 of Plaintiff with respect to the matters raised in this Complaint is necessary to put an end to the
21 continuing conduct of Defendants, and their agents, employees, and broker-dealers which is
22 intended and/or has the effect of adversely impacting the interests of Plaintiff as alleged herein and
23 causing harm to the interest of all shareholders of record of Upexi common stock as of September
24 30, 2024.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays against Defendants, and each of them, as follows:

- A. For compensatory damages in an amount to be determined at trial;
- B. For prejudgment interest and post-judgment interest;

- C. For declaratory judgment;
- D. For costs incurred in this action;
- E. For reasonable attorneys' fees;
- F. For such other and further relief as the Court may deem just and proper.

DATED this 22nd day of November, 2024.

DICKINSON WRIGHT PLLC

/s/ Justin J. Bustos

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